

STATE'S REQUEST FOR FLIGHT JURY INSTRUCTION AND/OR CONCEALMENT OR DESTRUCTION OF EVIDENCE JURY INSTRUCTION

A flight instruction is proper if the evidence shows that the “defendant’s manner of leaving the scene of a crime reveals a consciousness of guilt.” An instruction on concealment or destruction of evidence is proper when

The State of Arizona, by and through undersigned counsel, hereby requests that the jury instructions regarding Flight and/or Concealment/Destruction of Evidence be given. This motion is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS:

The defendant, Gilbert Corella, was interviewed by Phoenix Police Detective Ernie Moreno following his capture in Casa Grande, Arizona. The interview was audiotaped and videotaped. The videotape is to be played during the State’s case-in-chief.

During this interview, the defendant admitted telling his cousin that he had just stabbed someone. The defendant also admitted to requesting clothing from his cousin and taking a shower following the assault. The defendant further admitted to discarding the shirt and dyeing the shorts he was wearing at the time of the crime. The defendant claimed in his statement that he did these things because he was nervous, he was concerned how it was “going to look,” and he knew the police would find evidence (*i.e.*, fingerprints) on the knife that the victim had retrieved from him.

The defendant was located approximately two weeks following the crime in Casa Grande, Arizona, after the media had shown a composite drawing of the victim’s assailant on various news broadcasts.

The State now requests that the jury be given a Flight Instruction and/or Concealment/Destruction of Evidence Instruction.

II. LAW:

A. FLIGHT INSTRUCTION

“Flight instructions point out to jurors that they may consider the defendant’s behavior at or near the scene of the crime as bearing on guilt or innocence. Thus, such instructions necessarily refer in a very general manner to the defendant’s post-crime behavior.” *State v. Weible*, 142 Ariz. 113, 116-117, 688 P.2d 1005, 1008-1009 (1984). “If the evidence shows a defendant’s manner of leaving the scene of a crime reveals a consciousness of guilt, even in the absence of pursuit, an instruction on flight is permissible.” *State v. Salazar*, 173 Ariz. 399, 409, 844 P.2d 566 (1992); *see also State v. Cutright*, 196 Ariz. 567, 570, ¶ 9, 2 P.3d 657, 660 (App. 2000) [*disapproved of on other grounds by State v. Miranda*, 200 Ariz. 67, 69, ¶ 5, 22 P.3d 506, 508 (App. 2001)].

In *Salazar*, the Arizona Supreme Court upheld the giving of a flight instruction. The evidence indicated that the defendant was seen running from the crime and that a short distance away, he removed his shoes and discarded them. He claimed that he discarded the shoes because he knew his shoe prints would be all over the crime scene and, he said, “I didn’t want nothing to do with it.” The Court stated that the defendant’s actions could clearly be read as revealing a consciousness of guilt, and, therefore, the flight instruction was proper.

Here, although no one actually observed the defendant running from the crime scene, there is evidence from the victim and the defendant himself that the defendant wanted the knife returned to him because it had his fingerprints on it. There is also

evidence that the defendant left the scene, immediately discarded the shirt he was wearing, proceeded to his cousin's house, told his cousin he had stabbed someone, requested clothing from him, and then showered. There is also evidence that the defendant then moved to Casa Grande from Phoenix.

Clearly, pursuant to *State v. Salazar*, 173 Ariz. 399, 844 P.2d 566 (1992), a flight instruction is warranted in this case.

B. CONCEALMENT OR DESTRUCTION OF EVIDENCE INSTRUCTION

"Hiding" evidence is conduct that may indicate "consciousness of guilt," and such evidence is admissible at trial. *State v. Van Alcorn*, 136 Ariz. 215, 218, 665 P.2d 97, 100 (App. 1983). Therefore, "since hiding evidence is conduct which may indicate a consciousness of guilt, and is admissible, it follows that [an] instruction [regarding the hiding of evidence as indicating consciousness of guilt] is proper." *Id.* In *Van Alcorn*, the evidence showed that the defendant gave the knife used in the crime to a friend and that he discarded the mask he had also used during the crime because, by his own words, it would tend to incriminate him. The defendant claimed on appeal that the trial court erred in giving the following instruction:

If you find that a defendant attempted to suppress evidence against himself in any manner, such as by hiding evidence, such attempt may be used by you as a circumstance tending to show a consciousness of guilt. However, such evidence is not sufficient in itself to prove guilt and its weight and significance, if any, are matters for your consideration.

Id. In upholding the giving of the instruction, the Court of Appeals noted that since the evidence against the defendant was admissible, an instruction regarding that evidence was proper.

Extremely similar circumstances exist here. The Defendant discarded clothing and "destroyed" its evidentiary value by washing and dyeing his clothing. Clearly this indicates a consciousness of guilt. The instruction of *Van Alcorn* is proper for this case.

Finally, it must be noted that the existence of an alternative explanation for an accused's flight or concealment or destruction of evidence does not preclude the giving of an instruction regarding those actions. See, e.g., *State v. Hunter*, 136 Ariz. 45, 49, 664 P.2d 195, 199 (1983) [although defendant claimed he ran from crime scene out of fear, not out of consciousness of guilt, this did not preclude the giving of the flight instruction].

CONCLUSION:

For the reasons stated above, the State respectfully requests this Court to give the requested instructions.